SUPREME COURT U.S.
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# In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 826

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| RAYMOND CAINE, *Appellant,* vs. THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellees.* | Appeal—Criminal |

## APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS.

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## APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS.

Appellees state that the motion to dismiss is made on the ground that the appeal "does not present a substantial federal question".

It is respectfully submitted that the appeal herein *does present two most substantial federal questions, viz.:*

(1) *Does the ordinance as applied to appellant deny to him the equal protection of the laws?*

(2) *Does the ordinance deprive appellant of his liberty and property without due process of law?*

Appellees say "the principles governing this action have been clearly established by the federal courts in numerous previous decisions".

Neither the Supreme Court nor the Circuit Courts of Appeals have passed upon the questions here involved; but these Courts have in many cases clearly established the *principles* governing both such questions. These decisions are cited and quoted from in appellant's statement as to jurisdiction.

The Supreme Court has not decided a case involving a statute or ordinance which discriminated against truck operators desiring to enter a city from the outside and in favor of other truck operators, nor has said Court held, on facts in any way similar to those here presented, that an ordinance or statute is arbitrary, unreasonable and capricious. No such facts as are here involved have ever been presented to the Supreme Court. Many state Courts have held that an ordinance closing the city's border to traffic seeking to pass through the city or to enter the city must designate an alternate route in the city for such traffic.

Appellees cite the case of *Zucht v. King* (1922), 260 U.S. 174 referred to in Rule 15 of this Court. In that case one of the reasons assigned by the Supreme Court for its ruling was that the Supreme Court had passed upon the identical question there involved, that question being the power of the state to provide for the compulsory vaccination of school children. In dismissing the writ of error the Supreme Court said:

> "Long before this suit was instituted, Jacobson v. Massachusetts 196 U.S. 11 had settled that it was within the police power of a state to provide for compulsory vaccination. * * * In view of these decisions we find in the record no question as to the validity of the ordinance sufficiently substantial to support the writ of error."

Appellees make the following statement in their brief:

> "The questions presented by this appeal are extremely narrow. Any decision adverse to the constitutionality of the application of Section 105 to appellant under the facts in this case would be so narrow that it would not constitute a precedent of any value in determining the validity of this or similar litigation."

In this case two most important questions of law under Section 1 of the Fourteenth Amendment are directly involved.

Defendant is by the ordinance denied the equal protection of the laws and is deprived of his liberty and property without due process of law. Appellant pursuant to Section 1257 (2) 28 U.S. Code, has appealed to this Court from a decision of a state Court which is in favor of the validity of an ordinance which deprives appellant of the rights guaranteed him by the United States Constitution. The Supreme Court has not in any prior decision determined appellant's rights as it did determine the rights of the appellant in *Zucht v. King*, 260 U.S. 174, supra.

Appellant is entitled to have his rights guaranteed by the Fourteenth Amendment determined on this appeal.

Whether a decision in this case would be a "precedent in determining the validity of this or any similar litigation" is utterly beside the question. The statement of appellees quoted above is obviously wholly irrevelant, and we do not believe that any such contention has ever before been made in reply to a Statement as to Jurisdiction.

The matters here involved are of widespread public importance and the decision of this Court herein will no doubt determine all questions concerning the rights here asserted.

Appellant will nex reply to what is said in the Motion to Dismiss with reference to the two questions of constitutional law here involved.

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1. DENIAL OF EQUAL PROTECTION OF THE LAWS.

This question is discussed at pages 11 to 16 of the Statement as to Jurisdiction.

Appellant was hauling from a quarry on the county road of Edgewood Road 1.6 miles west of the western city limits of Redwood City to a point within the city limits.

Under the ordinance here involved appellant was forbidden to enter the city at the point where the county road of Edgewood Road reaches the western city limits and there connects with the city street of

Edgewood Road and the city street of Alameda de las Pulgas but trucks of other persons are permitted by the ordinance to use the streets of Edgewood Road and Alameda de las Pulgas right up to the point where the county road of Edgewood Road reaches the city limits.

After delivering his rock at a point in Redwood City appellant is forbidden by the ordinance to return to the quarry by way of Edgewood Road or any other city street connecting with the county road of Edgewood Road, but trucks of other persons who do not wish to pass over the western city line are permitted to use the city street of Edgewood Road and other city streets right up to the point where the county road of Edgewood Road reaches the western city limits.

A person who hauls from a point in Redwood City directly opposite the point where the county road of Edgewood Road reaches the city limits is permitted by the ordinance to operate his truck over the city street of Edgewood Road or any other street of Redwood City, but appellant is denied the right to use any city street which connects with the county road of Edgewood Road.

The provisions of the ordinance hereinabove referred to are Subdivisions 1 and 2 of Division "C" of Section 105 of the ordinance and Subdivisions 1 and 2 of Division "D" of Section 105 of the ordinance. Section 105 of the ordinance is set out at page iii of the Appendix to the Jurisdictional Statement.

Obviously this is a clear case of unlawful discrimination. All of these trucks have the same effect upon the streets of Redwood City and on the residents of the city.

Appellees cite and quote from the decision of the District Court of Appeal of the State of California in *Whyte v. City of Sacramento* (1924), 65 Cal. App. 534. *In the case cited there was absolutely no discrimination against anyone.* At page 550 the Court said:

> "the ordinance applies to all persons in the City of Sacramento engaged in using vehicles of capacity in excess of one ton in weight and exclusively used in the carrying of merchandise or articles of freight. *Thus it is readily to be noted that the ordinance does not discriminate against any particular person. All of the class engaged in the business mentioned within the limits of the City of Sacramento are subject to the terms of the Ordinance. In other words, the ordinance imposes no greater burdens upon one of the class mentioned than are laid on others of the same class or engaged in the same calling under the same conditions.*" (Emphasis added.)

*McCammon v. City of Redwood City*, 149 Cal. App. 421, is also cited by appellees on the question of discrimination. That case involved the same ordinance which is involved on this appeal. *The District Court of Appeal in that case obviously erred in overruling the objection that the ordinance discriminated against the appellant and in favor of other persons in the same manner as the appellant herein is discriminated against.*

In the case last cited the plaintiffs petitioned the Supreme Court of the State of California for a hearing in that Court after decision in the District Court of Appeal. Two of the justices of the Supreme Court were of the opinion that the petition should be granted. (Page 427.)

There is nothing in the refusal by the Supreme Court to hear the case of ***McCammon v. City of Redwood City,*** supra, after decision by the District Court of Appeal which in any way constitutes an approval of that decision by the Supreme Court, and it follows that the decision in the ***McCammon*** case does not determine that such decision is the law of California. Such was the holding of the Supreme Court of California in *People v. Davis* (1905), 147 Cal. 346, where the Supreme Court at page 350 said:

> "It is proper to add that the denial in any case of an application for the transfer of a case decided by a district court of appeal is not to be taken as an expression of any opinion by this court, or the equivalent thereof, in regard to any matter of law laid down in such opinion."

As to the objection of unlawful discrimination the District Court of Appeal at page 426 cited *Whyte v. City of Sacramento,* supra, quoted from above *where there was no discrimination and absolutely no attempt at discrimination.* With reference to the *Whyte* case the District Court of Appeal in *McCammon v. City of Redwood City,* supra, at page 493 said:

> "The decision points out that such an ordinance representing the exercise of the police power must

> be reasonably applied and cannot be invoked so as 'to discriminate in favor of or against particular classes of persons as to whom no reasonable basis for discrimination can be said to exist (page 545).' The Court concluded that there was no unlawful discrimination in such an ordinance".

It is obvious that the writer of the opinion in *McCammon v. City of Redwood City*, supra, could not have read the terms of the ordinance involved in *Whyte v. City of Sacramento*, supra.

The ordinance involved in the *Whyte* case placed no restrictions on vehicles entering or departing from the city as does the ordinance here involved. In fact the Sacramento ordinance did not cover the whole city but only that part thereof which was called the "old city".

In the Motion to Dismiss it is said that Section 713 of the Vehicle Code of California expressly granted the city authority to enact Section 105 of the ordinance here involved.

This is an entirely erroneous statement. The section provides:

> "Any incorporated city or city and county may by ordinance prohibit the use of a street to be described in said ordinance by any commercial vehicle or by any vehicle containing a gross weight limit to be specified in the ordinance."

It is obvious that there is no grant to a city to enact an ordinance which discriminates against certain vehicles and in favor of other vehicles of the same class; nor is there any express grant to any city to

enact an ordinance which is arbitrary, unreasonable or capricious.

Appellees say that "appellant has failed to produce any evidence overcoming the presumption in favor of reasonableness, validity and constitutionality of the ordinance".

As to *discrimination* the ordinance on its face, as applied to appellant, violates the provision of the Fourteenth Amendment that no person shall be denied the equal protection of the laws.

The ordinance on its face also shows that it is unreasonable, arbitrary and capricious and in violation of the due process provision of the Fourteenth Amendment, *for the reason that no alternate route is provided through the city over which appellant might operate his truck.* It is also unreasonable, arbitrary and capricious as shown by the facts set out at pages 17 to 20 of the Statement as to Jurisdiction.

In the Motion to Dismiss at page 15 the following statement is made:

> "The exceptions contained in subdivisions (C) and (D) are designed to permit limited use of prohibited streets where such use is essential to the economic life and general public welfare of the community and the surrounding area.
>
> Without such exceptions the basic regulations would fail as arbitrary. The exceptions, read together, are admirably designed and applied to accomplish the purpose of the legislation by eliminating nonessential truck traffic from lightly constructed narrow residential streets and rout-

ing as much of such traffic as is reasonably possible over wider, safer, and more adequately designed and constructed streets."

In other words, the contention is that the use by trucks hauling to and from points on all of the streets lying west of the state highway of El Camino Real is *essential,* but that the use of these streets by trucks hauling from outside the city or by trucks leaving the city at its western border is *nonessential.*

It is obvious that the right to enter the city from outside the city in order to make deliveries in the city is just as essential to the "economic life" of Redwood City as such use by trucks whose trips start inside the city limits of Redwood City.

In enacting the ordinance the city cannot discriminate against trucks of the same weight which use its streets, and it cannot lawfully enact an ordinance denying the right to enter the city limits unless an alternate route is provided for, and unless the ordinance is reasonable, not arbitrary and not capricious.

The "exceptions" appellees say "refer only to local hauls"; but the haul in which appellant was operating his truck was also a local haul *as soon as his truck entered the city limits.* Clearly there was discrimination when trucks of the same weight were permitted to use the city street of Edgewood Road and other streets from the western city limits which connect with the county road of Edgewood Road. The contention is really this: "Trucks reaching the city on the county road of Edgewood Road are not essential to the eco-

nomic life of the city whereas trucks operating from points in the city or from the state highway of El Camino Real are essential".

Referring to the case of *Richter Concrete Company v. City of Reading* (1956) 136 N.E. 2d 422, cited in the Statement as to Jurisdiction, appellees contend that the case is not authority here.

The material part of the ordinance in the above case reads as follows:

> "Sec. 1. That it shall be unlawful for any person, partnership, firm or corporation to operate any vehicle or vehicles on any of the public streets on the City of Reading, Ohio, containing a gross weight including load in excess of 20,000 lbs. *excepting* for the purpose of loading or unloading said vehicles at a residence, place of business, or industry within the boundaries of the City of Reading, Ohio, which shall include ordinary deliveries to any of such places, and *excepting also* for the purpose of traveling to or from a residence, place of business, or industry where said vehicles are registered or hired and excepting also for the operation of vehicles over Reading Road, a state highway."

It will be seen that the Reading ordinance was *less discriminatory* than the Redwood City ordinance. If Redwood City had such an ordinance appellant would not have violated it for he was making a delivery within the boundaries of the city. The Reading ordinance prohibited through traffic but did not forbid trucks to enter the city when they intended to deliver their loads to a point in the city. *The Reading ordi-*

*nance was aimed at through traffic; but whether the traffic was through or traffic destined to a point in the city is wholly immaterial as far as unlawful discrimination is concerned.*

Under the Redwood City ordinance, as has been pointed out in the Statement as to Jurisdiction, other trucks which did not enter the city at the point where appellant entered it are permitted to use all of the streets west of El Camino Real, a right which was denied to appellant.

The Redwood City ordinance and the Reading ordinance are not identical *but the rule of law that there can be no unlawful discrimination applies equally in both cases.*

At page 17 of the Motion to Dismiss the following statement is made:

> "The ordinance complained of here applies to all persons in the City of Redwood City engaged in using city streets with trucks of a gross weight in excess of 3 tons. The ordinance does not discriminate against any particular person. All of the class engaged in the described activity within the limits of the city are subject to the terms of the ordinance."

In view of the fact that persons operating trucks of a weight in excess of 3 tons may lawfully operate them on the city street of Edgewood Road and other streets *right up to the western city limits,* a right which the ordinance denies to appellant, *it is obvious that the statement quoted above is not true.*

In support of the above quotation appellees cite *Powell v. Commercial,* 127 U.S. 678, 32 L.Ed. 253, 8 Supreme Court 992. In that case the Supreme Court held that a statute of Pennsylvania forbidding the manufacture and sale of oleomargarine was constitutional. The statute discriminated against no one. In holding that the statute did not violate the equal protection of the laws provision of the Fourteenth Amendment, the Supreme Court said:

> "The objection that the statute is repugnant to the clause of the Fourteenth Amendment forbidding the denial by the state to any person within its jurisdiction of the equal protection of the laws is untenable. The state places under the same restriction and subject to like penalties and burdens all who manufacture or sell, keep in possession to sell, the articles embraced by its prohibition, thus recognizing and preserving the principle of equality among those engaged in the same business."

The Motion to Dismiss at page 18 also quotes from *Whyte v. City of Sacramento* (1924) 65 Cal. App. 534, supra, where the Court at page 550 said:

> "The classification made by the ordinance to wit, upon the basis of the weight of the vehicle, the load it carries, and the injurious effect thereof upon the streets involves a real and substantial distinction."

Appellant is not objecting to the Redwood City ordinance upon any such ground but upon the ground that it unlawfully discriminates against appellant and

in favor of other persons. What is said by the Court in *Whyte v. City of Sacramento,* supra, is wholly irrelevant here.

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**2. THE ORDINANCE AS APPLIED TO DEFENDANT IS ARBITRARY, UNREASONABLE AND CAPRICIOUS AND VIOLATES THE DUE PROCESS CLAUSE OF SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.**

The contention made in the Motion to Dismiss that the ordinance is not arbitrary, capricious or unreasonable, is obviously unsound.

This matter is discussed and the authorities are cited at pages 16 et seq. of the Statement as to Jurisdiction.

The cases there cited are to the effect that where a city closes a street connecting with a county road the city must designate an alternate route through the city. Seven cases are there cited. Only one of these cases viz. *Associated Transport v. City of Syracuse,* 196 Misc. 1091, 93 NYS 2d 423 (Appeal Dismissed 1951) 107 NYS 2d 565, is mentioned in the Motion to Dismiss.

Appellees say that Sec. 713 of the Vehicle Code and Sec. 105 of the ordinance "adequately and fully prevent any misuse of authority by the city in any way comparable to that attempted in the *Associated Transport* case."

The New York statute is the same as Sec. 713 of our Vehicle Code and the ordinance here involved "misuses" the authority conferred upon Redwood

City in precisely the same manner attempted in the *Associated Transport* case.

The New York statute involved in the *Transport* case, subdivision 1 of Sec. 90 of the Vehicle and Traffic law was practically identical with Sec. 713 of our Vehicle Code. The New York statute reads as follows:

> "The legislative body of a city, village, town of the first class or town of the second class having a population in excess of 25,000, or any municipal officer, board or body designated by it, is hereby authorized to designate highways respectively, in such city, or village, or such town outside of any village therein, in which vehicles shall proceed in one direction only, or from which heavy trucks shall be excluded. Such designation shall not be construed to prevent deliveries of merchandise or any property along such highways. Highways so designated shall be so marked at all intersections by conspicuous signs which shall be visible during the hours in which such designation is to be observed. No state highway shall be thus designated without the approval of the state traffic commission."

In that case the Syracuse ordinance limited certain westbound traffic to a designated street in Syracuse which street ran to the eastern boundary of the city of Solvay which city adjoins Syracuse on the west, and there connected with a Solvay Street over which heavy traffic was prohibited by a Solvay ordinance. *The Court held that the Syracuse ordinance was void because it prevented heavy traffic from proceeding beyond the western boundary of Syracuse.*

*The effect of the Redwood City ordinance is the same as the Syracuse ordinance. In both cases the ordinances stopped westbound traffic at the city limits.*

In several of the seven cases cited by appellant the courts either directly or by implication held that it was a duty of the city to furnish an alternate route *through the city.* In *Commonwealth v. Kennedy* (1937) 195 Atl. 770, the Court said:

> "Where other reasonably convenient routes *in the city* are available to the traffic thus excluded * * * the latter has no just cause of complaint."

The New York Court in *Associated Transport v. City of Syracuse,* supra, cited the opinion of the Attorney General of New York. The Attorney General said:

> "That under Sec. 90 of the Vehicle and Traffic law a municipality might lawfully designate highways from which heavy trucks should be excluded but in such cases the village had the duty to provide an alternate route which was adequate, safe and suitable, for otherwise it would be within the power of the village to bar such traffic entirely."

In the very nature of things an alternate route designated by a city ordinace must be a route within the city limits. A city has no control over roads outside of its limits.

It is evident that in the case now on appeal the ordinance does not provide for an alternate route, and the city in its attempt to sustain the ordinance is obliged to contend that the traffic excluded could

use a road which runs directly away from the city, over a high hill and through another city, the length of which road is approximately four times the length of the road through the city. Moreover, as shown by the evidence quoted at pages 17 to 20 of the Statement as to Jurisdiction the cost of hauling via the City of Woodside is approximately four times the cost of hauling through Redwood City.

In using the route via Woodside the burden and hazards of traffic are increased at least fourfold and are thrown upon county roads, state highways and the City of Woodside.

In *Shalko v. City of Sunnyvale* (1939) 14 Cal. (2d) 313 the Supreme Court of California held unreasonable and void a zoning ordinance which restricted certain land to residential uses although it adjoined a cannery. In holding the ordinance void as to such land the Supreme Court at page 215 said:

> "Unless the measure is clearly oppressive, it will be deemed to have been adopted within the purview of the police power. (Zahn v. Board of Public Works, 195 Cal. 497.) *But where the exercise of that power results in consequences which are oppressive and unreasonable courts do not hesitate to protect the rights of property owners against the unlawful interference with their property.* In other words, the governmental power is not unlimited, and a regulation of the use of property must rest upon a reasonable exercise of the police power. (Nectow v. Cambridge, 277 U.S. 183, 72 Lawyers Edition 842. Legislation may not under the guise of the police power impose restrictions that are unnecessary and unreason-

able upon the use of private property or the pursuit of useful activities. Washington v. Roberge, 278 U.S. 116.)"

Appellees ay that appellant claims a vested interest in every street in the city for heavy trucks. This statement is wholly untrue. Appellant makes no such claim but appellant does claim the right to operate his truck into and through the city from the point where the county road of Edgewood Road reaches the city limits. There are two city streets which terminate at this point and the city cannot close these streets to appellant without designating one or more streets as an alternate route.

Appellees cite *Wilbur v. City of Newton* (1938) 16 N.E. (2d) 86. In that case an ordinance prohibited heavy trucks on a portion of a single city street. All other streets in the city were open to such traffic. The ordinance made no attempt to interfere with traffic from outside the city. In certain cases (depending upon the destination of the truck) a longer haul was necessary but the streets over which trucks could operate were all within the city limits of Newton. It was shown that about 40 per cent of the traffic involved had to make a detour of about four miles, all within the city limits of Newton.

In *Whyte v. City of Sacramento* (1924) 65 Cal. App. 534 the Court at page 547 said:

"It is settled that the streets of a city belong to the people of the state and the use thereof is an inalienable right of every citizen of the

> state, subject to legislative control of such reasonable regulations as to traffic thereon or the manner of using them as the legislature of the state may deem wise or proper to adopt and impose. (Ex parte Daniels, 183 Cal. 636, 639)."

At page 13 of the Motion to Dismiss the following statement is made:

> "Appellant has several alternate routes available to him both within and without city limits."

This statement is utterly untrue. When appellant's truck reached the city limits at the point where the county road reaches the western city limits appellant had no alternate route through the city. The only way by which he could enter the city was by traveling west from the quarry, instead of east, on the county road of Edgewood Road to the county road of Canada Road; thence south on Canada Road to the City of Woodside and thence northerly on Woodside road, a state highway, to the state highway of El Camino Real and thence northwesterly on El Camino Real to the point where the city street of Edgewood Road reaches the state highway of El Camino Real, a total distance of about ten miles as against a distance of 2.7 miles if he traveled through Redwood City.

The only other available "alternate" route was by way of the county road of Edgewood Road to Canada Road and thence northerly on Canada Road to a state highway which runs from Canada Road through the City of San Mateo to El Camino Real, a state highway, a distance of approximately twenty miles from

the quarry to the point on El Camino Real which is reached by the city street of Edgewood Road.

Appellant cannot pass through the city of Belmont as the ordinance of that city forbids trucks of the weight he was operating to pass through Belmont. Likewise the ordinance of San Carlos forbids such trucks to pass through that city.

The burden of showing that appellant had an "alternate" route obviously devolved upon appellees. The ordinance provided for no alternate route and if a route *outside* of the city could legally be an alternate route it was incumbent upon appellees to prove the existence of such a route. The appellees did attempt to show that the route via the city of Woodside was an "alternate" route, and when appellant sought to show that because of the ordinances of Belmont and San Carlos there was no way in which appellant could pass through these cities appellees objected that such proof was irrelevant and immaterial and the objection was sustained by the trial Court, as shown by record on appeal herein. The ordinances were marked for identification and testimony was given that the roads had been posted as required by Section 713 of the Vehicle Code.

The courts take judicial notice of the boundaries of all cities and of all important roads and streets. San Carlos adjoins Redwood City on the north and Belmont adjoins San Carlos on the north. Belmont extends to the city limits of San Mateo. There is no unincorporated territory between Redwood City and

San Carlos or between San Carlos and Belmont or between Belmont and San Mateo.

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**REPLY TO CRITICISM IN MOTION TO DISMISS OF STATEMENT MADE AT PAGES 5 AND 6 OF THE STATEMENT AS TO JURISDICTION.**

At pages 5 and 6 of the Statement as to Jurisdiction the map of Redwood City and the surrounding territory (Defendant's Exhibit No. 1) the City streets and the truck routes are described in detail. The map is a part of the record on this appeal. The map is cumbersome and consists of a map of Redwood City and some of the surrounding area. Another map is attached thereto showing the unincorporated territory west of Redwood City and the City of Woodside.

All of the roads which are a part of the alleged "alternate" route are shown on this map.

The map and the City streets and truck routes are very carefully described in the Statement as to Jurisdiction. In the Motion to Dismiss it is said that "because of the errors, inconsistencies and confusion arising from attempts in the Jurisdictional Statement to describe the streets, truck routes and other matters by compass direction * * * a map is set out in the Appendix to this brief". No attempt is made to show wherein the description of the streets and the truck routes set out in the Statement as to Jurisdiction at page 6 is incorrect or that the compass points therein described are erroneous. *The points of the compass are shown on defendant's Exhibit No. 1.*

The map which is attached to the Motion to Dismiss is entirely incomplete and has no place on this motion. It is not a copy of the map introduced in evidence and it shows only a small part of the unincorporated territory shown on defendant's Exhibit No. 1. The map *omits the points of the compass.* The map also omits the City of Woodside, all of Canada Road, most of Edgewood Road west of the quarry and does not show the location of the quarry.

It is also said in the Motion to Dismiss that "neither the map (Defendant's Exhibit No. 1) nor a copy thereof is available to appellees for inclusion as an Appendix to this Motion." Defendant's Exhibit No. 1 is an exhibit now on file with the clerk of the Court from which this appeal is taken *and is available to the appellees.* The original map is included in the Record on Appeal filed herein but a copy thereof was substituted therefor.

When the Appellate Department of the Superior Court authorized the transmission of the original exhibits to the clerk of the Supreme Court it ordered that copies thereof should be substituted therefor in the files of the Appellate Department of the Superior Court. This was done as is shown in the record on appeal herein.

At pages 5 and 6 of the Statement as to Jurisdiction the street system of Redwood City is described and it is there shown that Redwood City is bisected by El Camino Real, a state highway, which runs generally from north to south. *Not one street running from El Camino Real westerly is a truck route. Wood-*

*side Road, a state highway, traffic on which cannot be affected by the ordinance, runs southerly from El Camino Real.*

In the Motion to Dismiss it is said:

> "The general regulation contained in section 105(b) limits all heavy truck traffic in the city to one or more of twenty one designated truck routes which provide at least nine points of ingress and egress from the city limits."

*The fact is as shown by the evidence in this case, that every one of these twenty-one truck routes are east of the state highway of El Camino Real, and not one of them is of any use to defendant and appellant.*

Appellees fail to state that all of these twenty-one truck routes are of no use to appellant in operating his truck from the quarry to his point of destination unless he travels by Edgewood Road, west of the quarry, Canada Road and the State highway of Woodside Road, and through the City of Woodside.

These twenty-one truck routes are all on the east side of the state highway of El Camino Real. This is shown by the map attached to the Motion to Dismiss.

## CONCLUSION.

It is respectfully submitted that the Motion to Dismiss should be denied.

Dated, April 8, 1958.

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